NO.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

THE PEOPLE OF THE STATE OF MICHIGAN,
PETITIONER

vs.

HARRIET DAVIS
RESPONDENT

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF MICHIGAN

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QUESTION PRESENTED

DID THE MICHIGAN SUPREME COURT CORRECTLY HOLD THAT AN EMERGENCY CIRCUMSTANCES ENTRY INTO PREMISES, AS DISTINGUISHED FROM AN EXIGENT CIRCUMSTANCES ENTRY, IS MADE BY THE POLICE IN THEIR COMMUNITY CARETAKER ROLE RATHER THAN TO SEARCH FOR EVIDENCE OF A CRIME, AND IS JUSTIFIED IF "REASONABLE," PROBABLE CAUSE NOT BEING REQUIRED, BUT ERR IN FINDING THAT AN ENTRY IS NOT REASONABLE IF THE CIRCUMSTANCES ON WHICH IT IS BASED ARE SUSCEPTIBLE OF INNOCENT EXPLANATIONS?

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NOW COME the People of the State of Michigan, by John D. O'Hair, Prosecuting Attorney for the County of Wayne, and Timothy A. Baughman, Chief of Research, Training and Appeals, and pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Michigan entered in the above-entitled cause on March 3, 1993,

OPINIONS BELOW

The opinion of the Michigan Supreme Court is as yet unreported, and is appended as Appendix A. The opinion of the Court of Appeals is reported at 189 Mich App 468, 473 NW2d 748 (1991), and is appended as Appendix B.

STATEMENT OF JURISDICTION

The judgment of the Michigan Court of Appeals was entered on May 21, 1991. The judgment of the Michigan Supreme Court was entered on March 3, 1993. The jurisdiction of this Court is invoked under 28 USC § 1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides, in

pertinent part: "The right of the People to be secure in their persons, houses, papers, and effects, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

> ...No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Respondent was charged with three counts of possession with intent to deliver more than 50 grams, and felony firearm. A hearing was held on a motion to suppress.

Officer Lynn Brown testified that on August 4, 1989, at around 6:00 pm he was in uniform on patrol with his partner. He then received a radio run to 3250 East Jefferson, the Belmar Motel. The run stated that shots had been fired from within either room 33 or 34 (R, 4,12). The officers went first to room 33. The officer knocked on the door, and the respondent came to the window (R,5). She then left the window, and the curtains fell back closed (R,6). Three to five minutes passed and the respondent did not come to the door. Finally she came to the door and

opened it (R,6). The officer explained the "nature of the run" and why they were there (R,6). From the doorway the officer could see narcotic paraphernalia on the dresser. He could also see a wooden object which appeared to be the butt of the gun stuffed between the mattress and box springs (R, 7). When asked "how much of the butt can you see?" he answered "Looks like the butt and then metal in the middle, like the handle of mine." (R, 7). He recognized it as the butt of a gun (R,7). The officer walked in, pulled up the mattress, and retrieved a gun (R,7). He asked the respondent "whose gun it is and whether or not she has a permit"--she answered it wasn't hers (R,8).

The narcotics paraphernalia the officer observed included a bag with a green leafy substance. The officer had engaged in confiscations of marijuana

previously (R,8). Also on the dresser, and visible from the doorway, were plastic pill capsules *(some empty)*, some with a white substance inside, razor blades, and some containers with a white substance. The officer suspected the substance to be a controlled substance (R,9). The officers continued to look through the apartment to look for anyone who was armed or injured, given the shots fired run (R,10).

Confiscated from the dresser top were two blue envelopes stamped "most wanted", one ziplock bag with suspected rock cocaine, one aluminum foil container with a white powdery substance, a pill bottle with pink capsules with a white powdery substance, a box of packaging envelopes, blue in color, an ink pad with a stamp marked "most wanted," three razor blades, two pink capsules, and three ziplocks (T,22).

On cross-examination the officer testified that when the officers approached the apartment, they had their guns out (R,15-17). After the respondent opened the door the officer "stepped in the doorway." (R,18). This was just inside the door (R,19). After the items had been confiscated the officer remarked to the respondent that "it looked like she probably had been set up" (R,24). His purpose at the motel to see if anyone was armed or injured in that area (R, 10).

Officer Royce Hill, the partner of Officer Brown, testified consistently with his partner. The officer entered the bathroom and found suspected cocaine on the vanity (R,40). He also found a small spoon in the toilet. In response to a question from the court, the officer stated that if the respondent had told the officers at the

doorway that they could not come in, they would not have acquiesced, because "due to the run, I didn't know if anyone was in there shot, could have been somebody in there hurt." (R,47). He also stated that the failure of the respondent to answer the door after looking out the window and seeing the uniformed officers "aroused his suspicions" (R,46). When the court asked "She wasn't gonna go anywhere until at least you satisfied yourself that either the shots had not been fired from the room or that nobody was inside that room wounded?" the officer answered "Correct" (R, 47).

The trial court made the following ruling:

> ...to enter, without consent, a dwelling of another, requires a warrant or the demonstration of a clearly delineated exception to the requirement of a warrant. There is no general exception for reasonable police conduct.

And there is no specific generic exception for all emergency situations.

Here, there was a forcible entry of a motel room, or at least an entry without consent. The entry was accomplished by police authority and demand. The entry would not have been allowed without the show of force, and authority, and the demand for entry. The conduct in question produced what we could call a plain view seizure of the items in question....to make it clear, in terms of my holding, whether or not the seizure is justified depends on whether the police had a right to be where they were.

I believe that under controlling precedent they did not. The radio run clearly gave the police a right to investigate. But, the level of information given the police, and the way in which it was given, cannot justify a nonconsensual entry onto private property.

I grant the motion to suppress. And I will dismiss the case. In so doing, I hold that the police acted reasonably in all that they did, and were I free to create law, I would uphold the seizure....I think they needed a warrant, or they needed to have their activity fit within one of the recognized exceptions. It doesn't under the facts of the case. (T,66-67).

The trial judge also stated that:

> ...I'm not all together sure that decisions like this further respect for the law. (T,-66)

The Michigan Court of Appeals reversed the order of suppression and dismissal. That court discussed the exigent circumstances warrant exception, and stated that "One well-recognized subcategory of the exigent circumstances exception centers on the police officer's role as a community caretaker." The court held that the police had a duty to investigate the 911 call regarding a shooting at the motel, and that it was thus not unreasonable for the officers to "approach the motel room cautiously, with their weapons drawn, and demand that the motel room occupant open the door." The discoveries that followed, held the court, were based on the "plain view" doctrine.

The Michigan Supreme Court then reversed the Court of Appeals, affirming the trial court. The court agreed with the prosecution that emergency circumstances is a separate exception from exigent circumstances, and that one permissible emergency circumstances entry, achieved as a part of the community caretaking function of the police, is an entry when the police reasonably believe someone inside is in need of immediate aid. The court specifically held that probable cause is not required for these entries, but a level of cause akin to reasonable suspicion; that is, when the police "reasonably believe that a person is in need of immediate aid." However, applying that test to the facts of the case, the court found the facts were inadequate to allow the requisite reasonable belief on the part of the police, in part because though the radio run and the conduct of the defendant raised

the suspicions of the officers, and though when the defendant did not come to the door she might have been hiding someone who was injured (and, petitioner notes, might also have been injured herself and unable to get to the door), she might also have been engaged in some innocent conduct, such as getting dressed so as to answer the door.

The State seeks certiorari.

REASONS FOR GRANTING THE WRIT

In this case what might be termed a warrantless entry (rather than search) occurred; that is, the respondent opened the door of the motel room upon police command (eventually), and the police stepped just inside the threshold of the room. Plain view observations then occurred. The question is whether that warrantless entry was permissible under the Fourth Amendment. The Michigan Supreme Court agreed with the State that "emergency circumstances" is a different doctrine than "exigent circumstances," being concerned with the community caretaking function of the police, and, held the court, allowing warrantless entries on less than probable cause in some circumstances, including when it is "reasonable" to believe someone inside might be in need of immediate aid. The State agrees completely with this

analysis; indeed, the State urged it upon the court. The difficulty is that the court applied the test so as to require that the information justifying the entry not be susceptible to any innocent inferences. In this the court erred; this is not a standard of reasonableness.

The Michigan Supreme Court's emergency circumstances analysis is supported by dicta from this Court from Mincey v Arizona, 437 US 385, 57 L Ed 2d 290, 98 S Ct 2408 (1978) and Thompson v Louisiana, 469 US 17, 105 S Ct 409, 83 L Ed 2d 246 (1984), where, though invalidating the searches which took place in those cases, the Court observed that the police are not barred "from making warrantless entries and searches **when they reasonably believe** that a person within is in need of immediate aid." Any evidence found in plain view during these searches is admissible. Other

authority also supports the emergency circumstances "exception," though this Court appears never to have dealt with it directly.

These authorities establish that the Michigan Supreme Court was correct in stating that probable cause is not needed for these entries, but rather that the entry is permissible when it is "reasonable to believe" that someone inside is in need of immediate aid, a standard akin to reasonable suspicion. See e.g. United States v Barone, 330 F 2d 543 (1964); State v Boggess, 340 NW2d 516 (Wis, 1983); State v Beede, 406 A2d 125 (NH, 1979). See also State v Hetzko, 283 So 2d 49 (Fla App, 1973); Root v Gauper, 438 F 2d 365 (CA 8, 1971); State v Halla-Poe, 468 NW2d 570 (Minn.App 1991); People v Duncan, 720 P2d 2 (Cal, 1986); Commonwealth v Daniels,

421 A 2d 721 (1980).

Petitioner obviously agrees with much of what the Michigan Supreme Court held in this case; however, that court's understanding of the doctrine of "reasonableness" is mistaken, as demonstrated by its discussion of the ambiguous facts here, the court finding a lack of reasonableness because the actions of the respondent are susceptible of innocent explanations (e.g. she could have been getting dressed, or simply did not want to answer the door, just as easily as she could have been hiding someone who had been injured, or herself injured and unable to answer the door). This is a mistaken understanding of reasonableness, and important to the Nation in providing guidance to police officers faced with circumstances such as those of this case.

Cases such as United States v Sutton, 794 F 2d 1415 (CA 9, 1986) demonstrate the mistake of the Michigan Supreme Court. One defendant claimed that there was no reasonable suspicion justifying the stop of his auto. Customs Officials were engaged in an air and ground surveillance in a remote location of Arizona. Ground surveillance spotted a low flying airplane, and intercepted the message "no go, no go, airplanes and helicopters, go to Bombers Square," which was an isolated and abandoned military landing field which was commonly used for smuggling drops. Customs officials had previously observed the airplane in question drop marijuana bales at the field and then fly into Mexico.

Agents and sheriff's deputies were dispatched to the landing field, and a pickup truck was observed on the airstrip.

It was watched, and an agent, listening to the same frequency over which the airplane message had been intercepted, overheard several clicks and the words "hey, hey, hey, hey...." At that time he also saw an airplane make a low pass over the field. The pickup truck was stopped as it left the field, and the question was whether reasonable suspicion existed for the stop. The defendant argued that the law enforcement officials had seen nothing criminal at all, and that the presence of the vehicle at the field was consistent with innocent activity. The Ninth Circuit rejected this approach to the question, stating that it was "irrelevant that the vehicle could have been at Bombers Square for innocent purposes. The test is not whether the conduct under question is consistent with innocent behavior; law enforcement officers do not have to rule out the possibility of innocent behavior."

The court also held that reasonable suspicion may be based on "inferences drawn from innocent appearing facts by experienced officers," and found that reasonable suspicion for the stop existed.

The Ninth Circuit had also rejected the notion that innocent explanations must be ruled out in order to establish reasonable suspicion in United States v Holland, 510 F2d 453 (CA 9, 1975). Pursuant to a search warrant sheriff's deputies searched a residence and discovered numerous guns, narcotics, and methamphetamine in the process of being "cooked." The house was on a narrow, rutted, dirt road in a rural area. The deputies also looked for a white male fugitive, described as armed and dangerous, and believed to be in the area, but did not find him. An officer was left at the house to preserve the evidence until the morning

(given the state of the methamphetamine). In the early morning hours two deputies who remained in the area in their patrol cars saw an automobile travelling toward them at 5-8 miles per hour, which led them to believe the driver was unfamiliar with the area and looking for a particular address. The occupants looked at the deputies (who were in marked patrol cars) for a long time as they passed. The defendant's vehicle reached a dead end, and then slowly reapproached the deputies, turned onto the dirt road on which the searched house was located, and slowed down even further. There were only two other houses on the road, and after the auto passed the first, the house which was searched being next, the deputies stopped the vehicle. A shotgun was ultimately found.

It was claimed that the police lacked reasonable suspicion because the conduct of

the defendant was "consistent with innocent behavior in that the defendant may have intended to drive past the house in question to the other house not connected with criminal activity." The Ninth Circuit explicitly rejected this standard for gauging the police conduct, holding that "the proper test is not whether the conduct of the car itself was 'consistent with innocent behavior,' but rather whether the officers were reasonable, under all the circumstances, in believing that the car or its occupants, were involved or about to become involved in criminal activity." The court found that reasonable suspicion had been demonstrated, stating that "Even if it was equally probable that the vehicle or its occupants were innocent of any wrongdoing, police officers must be permitted to act before their reasonable belief is verified by escape or fruition of the harm it was their duty to prevent."

The United States Supreme Court has also spoken to the point, in the case of United States v Cortez, 449 US 411, 66 L Ed 2d 621, 101 S Ct 690 (1981). The case involved a remote area of Arizona, in which Border Patrol agents found human footprints in the desert. Other sets were discovered, and from these footprints it was deduced that on a number of occasions groups had walked from the Mexican border, across a fairly well-defined path, to an isolated point on a highway running roughly parallel to the Mexican border.

One recurring shoeprint had a distinctive design. The area was known to be an area through which illegal aliens were moved into the country, and the agents concluded that the individual wearing the shoe with the distinctive print was a guide. From the path taken, it was also

surmised that the groups were likely being led across the border to the pickup point at night. A surveillance of the pickup area was established on a likely evening for the movement of illegal aliens, focussing on vehicles that passed the surveilling officers from the east and returned past them to the east after about one hour and a half, which would be the approximate time needed to pick up illegal aliens and return. They also looked for a vehicle large enough to carry 8 to 20 people without arousing suspicion. Only two vehicles of this sort passed them, and only one came back by. It was stopped, and an individual wearing shoes matching the distinctive shoeprint was in the vehicle. Six illegal aliens were in the back of the vehicle.

The Ninth Circuit had found reasonable suspicion lacking (the case was decided

prior to Sutton, which is a "post-Cortez" case) because the majority of the panel found that the circumstances allowed "far too many innocent inferences...." This Court disagreed, finding reasonable suspicion from circumstances innocent in themselves, and susceptible of innocent inferences, but also subject to suspicion as criminal activity by experienced officers. No justice dissented in the case. See also United States v Sokolow, 490 US 1, 104 L Ed 2d 1, 109 S Ct 1581 (1989), rejecting the argument that reasonable suspicion cannot be founded on "innocent" activity, the Court stating that "Any one of these factors is not by itself proof of any illegal conduct and is quite consistent with innocent travel. But we think taken together they amount to reasonable suspicion."

Conclusion

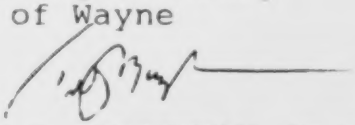
The State submits that the question of the permissibility of warrantless entries based upon reason to believe that someone inside is in need of immediate aid without the need for the reasons which justify the entry to be susceptible of no other possible inference raises a question of significance to the Constitutional jurisprudence of the Nation, so that plenary review should be granted.

RELIEF

WHEREFORE, petitioner requests that certiorari be granted.

Respectfully submitted,

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APPENDIX A

Decided May 21, 1991

OPINION OF THE

MICHIGAN COURT OF APPEALS

PEOPLE V HARRIET DAVIS

Before: Jansen, P. J., and Wahls and Hood, J. J.

Per Curiam. The prosecutor appeals as of right from a December 12, 1989, Detroit Recorder's Court order granting defendant's motion to suppress the evidence seized in a search of a motel room that defendant was occupying and dismissing the charges against defendant.[1]

During the evidentiary hearing regarding defendant's motion to suppress, Detroit police officers Lynn Brown and Royce Hill testified that on August 4,

1989, they were assigned patrol car 7-5. On that evening, at approximately 6:00 p.m., in response to a 911 emergency call, the dispatcher radioed the following message, "Car 7-7, 3250 East Jefferson, Belmar Motel, room 33 or 34, desk clerk says shots fired." Although the message was not directed to their patrol car, Brown and Hill responded because they were near the motel.

Upon their arrival, the officers did not notice any unusual activity. Brown and Hill approached room 33 with their guns drawn, and Brown knocked on the door while stating, "Police, open up." In response, defendant opened the curtains, looked out, and saw Brown and Hill in uniform with their weapons drawn. Brown and Hill identified themselves as police officers, but defendant left the window and closed the curtain. As Brown continued to bang his fist on the motel

room door, the motel manager arrived and offered to get the keys to the motel room. Brown testified that, on the basis of the information received from the dispatcher, he was concerned and fearful for his own safety as well as for the safety of others. After approximately three to five minutes, and before the motel manager returned with the key, defendant opened the door.

The officers stood in the doorway, with their weapons still drawn, and explained to defendant that they were responding to the radio message regarding gunfire. From his vantage point, Brown was able to see a wooden object which looked like the butt of a gun protruding from underneath a mattress. Brown also saw narcotics paraphernalia on a dresser. Brown immediately walked over to the bed to get the protruding item and discovered that it was, indeed, a gun. Once inside

the room, Brown noticed that, in addition to the narcotics paraphernalia he saw from the doorway, he was able to specifically identify pharmaceutical capsules, razor blades, and containers containing white substances on the dresser.

After Brown had gotten the gun, Hill proceeded into the bathroom area, where he discovered narcotics paraphernalia on the toilet tank. In addition to Brown's discovery, Hill also found a clear plastic bag of suspected marijuana, razor blades, and cash totaling $3,370 on the dresser. Hill testified that he went into the other areas of the motel room because he was concerned that someone may have been shot and wounded.

There was conflicting evidence regarding whether patrol car 7-7 ever responded to the dispatcher's message, but the narcotics team and another marked

patrol car arrived approximately twenty to thirty minutes after Brown and Hill.

Following the testimony and oral arguments, the trial court stated as follows:

> Here, there was a forcible entry of a motel room, or at least an entry without consent. The entry was accomplished by police authority and demand. The entry would not have been allowed without the show of force, and authority, and the demand for entry. The conduct in question produced what we could call a plain view seizure of the items in question, although you always get involved in circular reasoning when you start to call something plain view sezure. But, to make it clear, in terms of my holding, whether or not the seizure is justified depends on whether the police had a right to be where they were.
>
> I believe that under controlling precedent they did not. The radio run clearly gave the police a right to investigate. But, the level of information given to the police, and the way in which it was given, cannot justify a nonconsensual (sic) entry into private property.

> I grant the motion to suppress. And I will dismiss the case. In so doing, I hold that the police acted reasonably in all that they did, and were I free to create law, I would uphold the seizure....But, as I read the law, I believe that I am required to hold that under the facts of this case - and I am not indicating that it's clear - well, I don't have to say anything more. I've already said that I think what the police did was reasonable, but I don't think that there is a general exception for reasonable police activity. I think they needed a warrant, or they needed to have their activity fit within one of the recognized exceptions. It doesn't under the facts of the case. And, as a result, I'm suppressing the evidence.

The Fourth Amendment of the United States Constitution and the parallel provision of the Michigan Constitution guarantee the right of people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, Sec 11. The Fourth Amendment is not a guarantee against all

searches and seizures, but only against those which are unreasonable. United States v Sharpe, 470 US 675; 105 S Ct 1568; 84 L Ed 2d 605 (1985); People v Shabaz, 424 Mich 42, 52; 378 NW2d 451 (1985), cert dis 478 US 1017 (1986); People v Orlando, 305 Mich 686, 690; 9 NW2d 893 (1943). Therefore, the touchstone of a reviewing court's Fourth Amendment analysis is always "the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." Michigan v Long, 463 US 1032, 1051; 103 S Ct 3469; 77 L Ed 2d 1201 (1983), quoting Terry v Ohio, 392 US 1, 19; 88 S Ct 1868; 20 L Ed 2d 889 (1968). The Michigan Constitution does not impose a higher standard of reasonableness for searches and seizures than that imposed by the federal constitution. People v Nash, 418 Mich 196, 214-215; 341 NW2d 439 (1983);

People v Ragland, 149 Mich App 277, 281; 385 NW2d 772 (1986).

Generally, a search conducted without a warrant is unreasonable unless there exists both probable cause and a circumstance establishing an exception to the warrant requirement. People v Malone, 180 Mich App 347, 355; 447 NW2d 157 (1989); People v Anthony, 120 Mich App 207, 210; 327 NW2d 441 (1982), lv den 417 Mich 897 (1983), cert den 462 US 1111 (1983). Among the recognized exceptions to the warrant requirement are consent, exigent circumstances, and plain view. People v Castle, 126 Mich App 203, 208; 337 NW2d 48 (1983).

When a defendant moves to suppress evidence which was allegedly illegally obtained, the prosecutor has the burden to show that the search and seizure were justified by a recognized exception to the warrant requirement. People v Wade,

157 Mich App 481, 485; 403 NW2d 578 (1987). This Court will not reverse a trial court's decision following a suppression hearing unless it is clearly erroneous. People v Burrell, 417 Mich 439, 448; 339 NW2d 403 (1983); People v Russo, 185 Mich App 422, 434; 463 NW2d 138 (1990). Therefore, the trial court's decision will be affirmed unless, upon a review of the record, this Court is left with a definite and firm conviction that a mistake was made. People v Toohey, 183 Mich App 348, 352; 454 NWE2d 209 (1990), lv gtd 436 Mich 880 (1990).

In the instant case, the prosecutor relied on the exigent circumstances and plain view exceptions to the warrant requirement to justify the search and seizure which occurred in defendant's motel room. However, the trial court based its decision on the consent exception, and found defendant did not

consent to the entry of the police officers. Nevertheless, the trial court was correct in viewing the question presented as asking whether the police were justified in commanding defendant to open the motel room door. In other words, whether the police officers were in a position where they had a right to be when they viewed the incriminating evidence.

The consent exception permits a search and seizure when the consent is unequivocal and specific. Malone, supra. The validity of a consent depends on the totality of the circumstances, People v Brown, 127 Mich App 436, 441; 339 NW2d 38 (1983), and the prosecutor has the burden of proving that the person consenting was authorized to do so and did so freely, People v Wagner, 104 Mich App 169, 176; 304 NW2d 517 (1981). A consent can be valid even if the person is not apprised

of his right to refuse consent. Malone, supra, p 356.

Clearly, where an occupant opens a door in compliance with a police demand there can be no consent as a matter of law. United States v Windsor, 846 F2d 1569, 1573, n 3 (CA 9, 1988). Accord Bumper v North Carolina, 391 US 543, 548-550; 88 S Ct 1788; 20 L Ed 2d 797 (1968). On the facts presented in the case before us, the consent exception to the warrant requirement is not applicable. Therefore, if the seizure is to be upheld as constitutional, it must fall within one of the other recognized exceptions to the warrant requirement.

The exigent circumstances exception is applicable where the police have probable cause to believe that an immediate search will produce specific evidence of a crime and that an immediate search without a warrant is necessary in

order to protect the officers or others, to prevent the loss or destruction of evidence, or to prevent the escape of the accused. People v United States Currency, 148 Mich App 326, 330; 383 NW2d 633 (1986).

One well-recognized subcategory of the exigent circumstances exception centers on the police officer's role as a community caretaker. Under this exception, police have a right to enter premises, provided there is probable cause, as part of their routine community caretaking function. That function naturally includes responding to calls reporting gunfire within residential areas. See United States v Nord, 586 F2d 1288, 1290 (CA 8, 1978). See also Arizona v Hicks 480 US 321, 334; 107 S Ct 1149; 94 L Ed 2d 347 (1987) (O'Connor, J. dissenting). Further, the Fourth Amendment does not bar police officers

from making entries and seraches without a warrant where they reasonably believe that a person within is in need of immediate aid. Mincey v Arizona, 437 US 385, 392; 98 S Ct 2408; 57 L Ed 2d 290 (1978). "The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency." Id., quoting Wayne v United States, 115 US App DC 234, 241; 318 F2d 205 (1963).

Probable cause to search exists when facts and circumstances warrant a reasonably prudent person to believe that a crime has been committed and that the evidence sought to be found is in a stated place. Whether probable cause exists depends on the information known to the officers at the time of the search. People v Preston Williams, 160 Mich App 656, 660; 408 NW2d 415 (1987).

In this case, the officers were responding to a report of gunfire within one of two motel rooms. The officers did not know if they would discover a shooting victim, a hostage situation, or an armed gunman. Notwithstanding, it was the officers' duty to investigate the report. A reasonably prudent person, in those circumstances, would believe that if a shooting took place, one of the two motel rooms would contain evidence of that shooting. Although it was possible that the report itself was false, we are concerned with what a person in the officers' position would have believed was probable. Williams, pp 661-662. Thus, it was not unreasonable for the officers to approach the motel room cautiously, with their weapons drawn, and demand that the motel room occupant open the door. "Certainly it would be unreasonable to required that police

officers take unnecessary risks in the performance of their duties." Terry v Ohio, 392 US 1, 23; 88 S Ct 1868; 20 L Ed 2d 889 (1968).

The plain view exception allows seizure of objects falling within the plain view of an officer who is rightfully in a position where the evidence is plainly visible. Harris v United States, 390 US 234, 236; 88 S Ct 992; 19 L Ed 2d 1067 (1968); People v Tisi, 384 Mich 213, 218; 180 NW2d 801 (1970). The requirements of the plain view exception are: (1) there must be prior justification for intrusion into the otherwise protected area, (2) the evidence must be obviously incriminatory or contraband, and (3) the discovery of the evidence must be totally inadvertent. Coolidge v New Hampshire, 403 US 443, 466; 91 S Ct 2022; 29 L Ed 2d 564 (1971); People v Myshock, 116 Mich App 72, 75-76;

321 NW2d 849 (1982). The police may seize any evidence that is in plain view during the course of their legitimate emergency activities. Michigan v Tyler, 436 US 499, 509-510; 98 S Ct 1942; 56 L Ed 2d 486 (1978); Mincey, supra; Coolidge, supra, pp 465-466.

On the basis of the record in this case, we conclude that the seizure fell within the plain view exception to the warrant requirement. First, the police officers had the right to be on the motel premises and to knock and demand that defendant open the motel room door as part of their routine community caretaking function, which includes responding to 911 emergency calls. Once defendant opened the door, and before the officers entered the motel room, the officers saw in plain view what appeared to be the butt of a gun protruding from under the mattress. To satisfy the

second requirement of the plain view doctrine, i.e., whether the apparent gun butt protruding from under the mattress was obviously incriminatory or contraband, the officers needed only have probable cause, dependent upon the information known to the officers at the time of the seizure, to believe that the object was evidence or an element of a crime. Williams, supra, p 660; People v Alfafara, 140 Mich App 551, 557; 364 NW2d 743 (1985). Here, on the basis of the information provided by the 911 emergency dispatcher, the police officers were put on notice that there was a possibility that a shooting had occurred at that location. Under the circumstances, the police officers had probable cause to believe that the weapon was evidence or an element of a crime. Third, the discovery of the evidence was inadvertent, because the police officers

were on the premises to investigate the report of a shooting, not to search defendant's motel room for weapons or controlled substances. Finally, once the officers entered the motel room, it was not clear that defendant was the only individual present. Thus, given the nature of the circumstances, it was not unreasonable for the police officers to look in the bathroom. Once they were there, the remaining contraband evidence was in plain view.

In conclusion, we are definitely and firmly convinced that a mistake was made. The trial court's decision granting defendant's motion to suppress the evidence was clearly erroneous.

Reversed and remanded. We do not retain jurisdiction.

[1]Possession with intent to deliver more than 50, but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii); MSA 14.15(7401)(2)(a)(iii), possession with intent to deliver less than fifty grams of heroin, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), possession of marijuana, MCL 333.7403(2/d); MSA 14.15(7403)(2)(d), and possession of a firearm during the commission of a felony, MCL 750.227b, MSA 28.424(2).

APPENDIX B

Decided March 2, 1993

OPINION OF THE

MICHIGAN SUPREME COURT

PEOPLE V HARRIET DAVIS

BEFORE THE ENTIRE BENCH

BRICKLEY, J.

We have been asked to determine whether the Court of Appeals erroneously reversed a trial court suppression of evidence seized in a search without a warrant of a motel room following a telephone report of gunfire at that location. We respond in the affirmative and accordingly reverse the Court of Appeals and reinstate the trial court's decision.

I

FACTUAL BACKGROUND

The following facts were elicited during an evidentiary hearing in Detroit Recorder's Court on November 2, 1989. On August 4, 1989, Detroit Police Officers Lynn Brown and Royce Hill were on uniformed patrol in Scout Car-7-5. At 5:35 p.m., the two officers heard a radio dispatch directing Scout Car 7-7 to go to the Belmar Hotel, at 3250 East Jefferson in downtown Detroit. The exact words of the broadcast were "7-7, 3250 East Jefferson, Belmar Motel, Room 33 or 34, ah, desk clerk says shots fired." Although this dispatch did not direct them to go to the scene, Officers Brown and Hill did so because they were nearby.

When the officers arrived at the Belmar, they parked their car in front of the motel, adjacent to the office. They observed no unusual activity in or around

the motel. They did not speak to the desk clerk or the manager, but instead went directly to the rooms. The officers approached room 33 first, testifying that they did so because it was the first one they came to. As they approached the door to room 33, Officer Brown had drawn his service revolver, and Officer Hill was carrying a shotgun in one hand and a flashlight in the other. The officers knocked on the door, announcing either "police," or "police, open up."

In response to this knocking, defendant-appellant Davis peeked out from between the curtains and looked at the officers, who were standing there with guns drawn. She left the window and the curtains fell back into place. The officers continued to knock and announce their presence, but defendant did not respond. As time passed, the police became more suspicious that defendant was

trying to hide something, and continued their attempts to get a response.

The two officers gave different versions of what happened immediately before they entered room 33. Officer Brown testified that while they were trying to get someone to answer the door, a man, whom Officer Brown described as the manager, approached and asked if the officers wanted a key to the room. Officer Brown replied in the affirmative. However, defendant opened the door before the manager returned with the keys. Officer Hill, on the other hand, testified that the officers did not speak to the manager before entering the room. There was no evidence that either of the officers asked this person if he had called 911 and reported that he heard gunshots.

According to the officers, it was three to five minutes before the defendant opened the door. When she finally did, the officers stepped just inside the doorway. After the officers entered the room, they explained to her that they were investigating a report that gunshots had been fired. As they stood there, Officer Brown saw what he thought was a handgun wedged between the mattresses on the bed. He walked over to the bed to retrieve the object and found that it was indeed a gun. In addition, Officer Brown testified that, from his vantage point inside the door, he had observed some objects on the "dresser table." Specifically, he saw a plastic bag with a green substance in it, and a number of pharmaceutical capsules, some filled with a white substance, and others empty. Once Officer Brown stepped into the room and retrieved the gun, Officer

Hill walked through the room and went into the bathroom, to check the bathroom area to see if any injured persons, suspects, or more weapons were on the premises. While in the bathroom, Officer Hill discovered measuring spoons in the toilet bowl and narcotics in plastic bags on the bathroom sink.

The officers were joined at the scene by other officers, including a narcotics team, approximately twenty minutes to one-half hour after searching the room. According to Officers Hill and Brown, the unit originally dispatched to the scene, Scout 7-7, never arrived. In total, the police seized six bottles of narcotics, a blue and white plastic bag containing two blue envelopes marked "Most Wanted," one ziplock bag containing rock cocaine, one aluminum foil container of white powdery substance, a white pill bottle containing forty-nine pink

capsules that contained a white powdery substance, a red memo book, one box of packaging envelopes, an ink pad with a stamp marked "Most Wanted," three razor blades, two loose pink capsules, three ziplock-type plastic bags and $3,370 in cash. The officers testified that all of these items were found on the top of the dresser-table.

At the evidentiary hearing, the trial judge asked Officer Hill what he would have done if, after the officers entered the room, defendant had told them to leave without making any investigation. Officer Hill responded that he would not have allowed her to close the door and go about her business, "(b)ecause due to the run, I didn't know if anyone was in there shot, could have been somebody in there hurt." The trial judge asked, "She wasn't gonna go anywhere until at least you satisfied

yourself that either the shots had not been fired from the room or that nobody was inside that room wounded?" Officer Hill responded, "Correct."

The police dispatch that originally brought the officers to the Belmar was based on a call to 911. A transcript and tape of that call was admitted into evidence at the hearing. The caller claimed to be the manager of the "Belmont" Hotel on Jefferson, and reported hearing "shots coming out of 33 or 34 ...." In addition to giving the wrong name of the motel, the caller was unable to give the address or the cross street. In explanation, the caller claimed to have just started working at the Belmar.

The police found no indication that shots were actually fired in either room 33 or 34. No other person, injured or otherwise, was found in room 33.

Furthermore, it does not appear that the police ever searched room 34. Officer Brown testified that he never entered room 34, and that he did not know if Officer Hill or any of the police officers who came to the scene ever did. Officer Hill did not testify with regard to this point. It appears that the police quickly came to the conclusion that the report of "shots fired" was false, or that they lost interest in its significance after discovering evidence of a drug violation. In fact, after discovering the evidence, Officer Brown testified that he told defendant that she probably had been "set up," suggesting that he thought the basis of the radio dispatch was false.[1]

Defendant was arrested and charged with four counts: (1) possession with intent to deliver 50 to 225 grams of cocaine; (2) possession with intent to

deliver less than 50 grams of heroin; (3) possession of marijuana in violation of MCL 333.7401 (2) (a); MSA 14.15(7401) (2) (a) and (4) possession of a firearm during the commission of a felony, MCL 333.7403(2) (d); MSA 14.15(7403) (2) (d). She was bound over to Recorder's Court, where she filed a motion to suppress the evidence seized from her motel room. She contended that the officer's entry and seizure of the evidence violated the United States Constitution, because the officers acted without a warrant and the search and seizure did not fall under any of the exceptions to the warrant requirement.

After the evidentiary hearing, the trial court ordered that the evidence be suppressed and dismissed the case, stating:

> (I)n terms of my holding, whether or not the seizure is justified depends on whether the police had a right to be where

> they were. I believe that under controlling precedent they did not. The radio run clearly gave the police a right to investigate. But, the level of information given to the police, and the way in which it was given, cannot justify a nonconsensual entry into private property. (Emphasis added.)

Although he granted defendant's motion, he did so relucttantly, holding that the police acted reasonably in all that they did, and stated:

> (W)ere I free to create law, I would uphold the seizure ... but I don't think that there is a general exception for reasonable police activity. I think they needed a warrant, or they needed to have their activity fit within one of the recognized exceptions. It doesn't, under the facts of this case. And, as a result, I'm suppressing the evidence.

The people appealed this decision.

The Court of Appeals held that the trial court erred in suppressing the evidence and reversed. 189 Mich App 468; 473 NW2d 748 (1991). The Court of

Appeals stated that in order for a search without a warrant to be reasonable under the Fourth Amendment, probable cause and a circumstance establishing an exception to the warrant requirement must exit. Id., pp 472-473. The Court found that the search and seizure was legal because it fell under the community caretaker and plainview exceptions to the warrant requirement. Id, p 476. It described the community caretaker exception as a "well-recognized subcategory" of the exigent circumstances exception. Id., p 474. It stated, the "police have a right to enter premises, provided there is probable cause,[2] as part of their routine community caretaking function." Id., pp 474-475. Responding to reports of gunfire in residential areas is one of these caretaking functions, and such a report provides the necessary probable cause. Id., p 475.

Furthermore, the Court also stated that the police may make entries without warrants into protected areas when they reasonably believe a person within is in need of immediate aid. Id., p 475. However, the Court did not provide further analysis of this doctrine, and did not specifically apply it to the facts of this case. Finally, it found that the seizure of the incriminating evidence was legal under the plain view exception to the warrant requirement. Id., pp 476-477.[3]

The Court of Appeals denied defendant's motion for rehearing on July 25, 1991. This Court granted leave to appeal, 439 Mich 1001 (1992).

II

These facts require us to determine whether the United States Constitution permits the police to force entry into a

motel room on the basis of a police dispatch stating that a witness reported hearing gunshots coming from one of two motel rooms, without further corroboration. This in turn requires a discussion of two exceptions to the warrant requirement: first, what is often called the emergency aid exception and, second, what is sometimes called the community caretaking exception.[4]

The Fourth Amendment of the United States Constitution prohibits unreasonable searches and seizures and provides that no warrants shall issue without probable cause. US Const, M IV.[5] The Michigan Constitutional provision is substantially the same. Const 1963, art 1, Sec 11. Essentially, in order to search a dwelling for evidence of a crime, the police must have probable cause to search, and must also have a warrant based on that probable

cause. People v Blasius, 435 Mich 573; 459 NW2d 906 (1990), citing Coolidge v New Hampshire, 403 US 443, 455; 91 S Ct 2022; 29 L Ed 2d 564 (1971); see also Payton v New York, 445 US 573, 590; 100 S Ct 1371; 63 L Ed 2d 639 (1980). The United States Supreme Court has recently reiterated this requirement, noting: Searches conducted without a warrant are per se unreasonable under the Fourth Amendment. "'subject only to a few specifically established and well-delineated exceptions.'" Horton v California, 496 US 128, 133, n 4; 110 S Ct 2301; 110 L Ed 2d 112 (1990). See also Mincey v Arizona, 437 US 385; 98 S Ct 2408; 57 L Ed 2d 290 (1978). Thus, in order to show that a search was legal, the police must show either that they had a warrant, or that their conduct fell under one of the narrow, specific exceptions to the warrant requirement.

Examples of exceptions to the warrant requirement are: (1) searches incident to arrest, (2) automobile searches and seizures, (3) plain view seizure, (4) consent, (5) stop and frisk, and (6) exigent circumstances. People v Toohey, 438 Mich 265, 271, n 4; 475 NW2d 16 (1991). See also People v Blasius, supra.

Finally, an occupant of an hotel or motel room is also entitled to the Fourth Amendment protection against unreasonable searches and seizures. Stoner v California, 376 US 483, 489-490; 84 S Ct 889; 11 L Ed 2d 856 (1964).

A number of potential issues are not disputed by the parties. First, the people concede that the police officers entered defendant's room. They also concede that defendant did not consent to this entry. Further, they do not claim that defendant lacks standing to invoke

Fourth Amendment protections because she was in a motel room. The people also concede that Officers Brown and Hill had no warrant to search defendant's room, nor did they have probable cause to believe that evidence of a crime could be found within the room. Defendant, on the other hand, does not dispute that the evidence in question was in plain view once the police were in the room. Nor does she attack the scope of the search that the police made after entering the room. The only point of contention between the parties is whether the police had the right to enter the room.

The people contend that the officers were performing an "emergency circumstance" or "community caretaking" search and thus the searches should be found legal if the police were acting reasonably. Traditional probable cause should not be required. Defendant

asserts that these exceptions do not justify the police entry.

The so-called emergency aid exception was described by the United States Supreme Court in Mincey v Arizona, supra, and what is sometimes called the community caretaker exception was recognized by that Court in Cady v Dombrowski, 413 US 433; 93 S Ct 2523; 37 L Ed 2d 706 (1973). These exceptions have been recognized by this Court in City of Troy v Ohlinger, 438 Mich 477; 475 NW2d 54 (1991). These doctrines are unique in the area of search and seizure, because when the actions of agents of the state fall under one of these exceptions, contrary to the assertion of the Court of Appeals, such agents generally need not have the probable cause traditionally required in searches for evidence in order to enter into a protected area. It is well settled that in order to search

for evidence of a crime, police must have probable cause that a crime has been committed and evidence of the crime is to be found in the place to be searched. However, when police are performing "caretaking" functions, they are usually not searching for anything. Similarly, in cases involving the emergency aid doctrine, the police are not searching for evidence of a crime, but are searching for a person in need of immediate aid. When these doctrines are implicated, the question becomes: what degree of information or suspicion must the police have in order to search for such a person?

A. The Emergency Aid Exception

Federal and state courts have long recognized an exception to the Fourth Amendment that allows police officers to make entries without warrants under

circumstances where they believe some person is in need of assistance or to prevent serious harm to someone. An early enunciation of this doctrine appeared in the influential case Wayne v United States, 115 US App DC 234; 318 F2d 205 (1963), cert den 375 US 860 (1963), in which the United States Court of Appeals for the District of Columbia stated:

> (A) warrant is not required to break down a door to enter a burning home to rescue occupants or extinguish a fire, to prevent a shooting or to bring emergency aid to an injured person. The need to protect or preserve life or avoid serious injury is justification from what would be otherwise illegal absent an exigency or emergency .... A myriad of circumstances could fall within the terms "exigent circumstances" referred to in e.g., smoke coming out a window or under a door, the sound of gunfire in a house, threats from the inside to shoot through the door at police, reasonable grounds to believe an injured or seriously ill person is being held within. (115 US App DC 241. Citation omitted.)

The United States Supreme Court recognized this exception in Mincey v Arizona, supra. In refusing to recognize a general murder scene exception, the Mincey Court set forth the following dicta:

> Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid. (437 US 392. Citations omitted; emphasis added.)

This language indicates that such "entries" need not be subject to traditional probable cause analysis, but that their legality should be evaluated on the basis of whether the police "reasonably believed" a person needed aid.

The only case decided by this Court that deals with the emergency aid exception is Ohlinger, supra.[6] It does

not, however, completely resolve the issues we face. In Ohlinger, the police received a report of a car accident from an eyewitness. The witness told the police he had heard a crash outside his home and saw a car being driven away by a man holding his head as if he had been injured. The witness gave the license plate number to the police officer, who went to the owner's address. When he arrived, the officer saw a car matching the witness' description parked in the driveway, with its front end smashed in. He knocked at the door, but received no answer. He shined his flashlight into a few windows, and eventually saw Ohlinger lying on a bed with his head bleeding. He entered the house and tried to rouse Ohlinger. The officer testified that he smelled alcohol on Ohlinger's breath and that Ohlinger's speech was slurred. Ohlinger was arrested and charged with

operating a motor vehicle under the influence, and leaving the scene of a personal injury accident. Id., pp 479-481.

This Court ruled that the entry into Ohlinger's home was legal and that the evidence obtained as a result was admissible. In part, the entry was justified on the grounds that the police had probable cause to arrest. However, this Court also held:

> Where the police have probable cause, based on specific, articulable facts, to believe that immediate entry is necessary to assist a person who may be in serious need of medical aid, they may enter without a warrant. The entry must be limited to the justification therefor, and the officer must be motivated primarily by the "perceived need to render aid or assistance." (Id., pp 484-485. Citation omitted; emphasis added.)

It is possible to read Ohlinger as requiring the police to have probable cause to believe a person was in need of

immediate aid before they can enter a dwelling without a warrant. However, the people submit that Ohlinger only requires that the police have "reasonable belief" because, in formulating the standard in Ohlinger, this Court relied on Mincey and other cases in which reasonable belief is the standard. The people point out that, in Ohlinger, this Court stated the dicta from Mincey that police may make entries to render emergency aid on the basis of reasonable belief. Ohlinger, p 481. Thus, the people submit, all the police must show to invoke this exception is that they reasonably believe that a person inside a dwelling was in need of immediate aid. It is difficult to respond to the people's argument with regard to Ohlinger because of the facts of that case. In Ohlinger, the police not only had probable cause that a person was in need of immediate aid, but also

had probable cause to arrest that person. Thus, we did not focus on whether the police needed to have probable cause or reasonable belief. However, in this case, there is no question that police did not have probable cause to search for evidence of a crime, or probable cause that a person was in need of aid. Thus, we must clarify what standard of belief the police must have to invoke this exception.

First, we look to Mincey, supra. Although it is not clear how to apply the standard articulated in Mincey, that case cites a number of state and federal cases that did apply this doctrine. The Court specifically stated that in citing those cases, it did not necessarily approve their holdings. However, some of these cases remain influential and thus shed some light on how to actually apply this exception to the warrant requirement.

For example, People v Barone, 330 F2d 543 (CA 2, 1964), cert den 377 US 1004 (1964), is particularly instructive because, as in this case, the police initially entered the premises to investigate what they suspected was an emergency situation. However, it turned out that no emergency existed, and the police seized evidence that resulted in the conviction of a crime unrelated to the original reason the police entered defendant's dwelling. In Barone, the police heard screams coming from a room in a rooming house. They knocked on the door, which was answered by two women who claimed not to have heard any screams. One of the women suggested that she might have been having a nightmare. The officers then heard the sound of a toilet flushing, and the defendant then emerged from the bathroom. One of the officers ran into the bathroom and saw pieces of

paper money floating in the toilet, which he retrieved. They later turned out to be counterfeit bills. Id., p 544. Pursuant to finding this search legal, the United States Court of Appeals for the Second Circuit stated:

> The right of the police to enter and investigate in an emergency without the accompanying intent to either search or arrest is inherent in the very nature of their duties as peace officers and derives from the common law. Indeed, it is obvious that had the patrolmen been denied entry to the apartment they would have had the right, if not the duty, to gain entry forcibly. (Id., p 545. Citations omitted.)

Root v Gauper, 438 F2d 361 (CA 8, 1971), is another frequently cited federal case relied upon by Mincey. Root is helpful because it addresses the question of the level of suspicion the police must have to justify entry. In this case, the victim of a shooting contacted the operator for an ambulance. The police were dispatched to the area.

The victim was removed from the home before the police arrived. The police entered the house upon arrival, even though they knew the victim had already been removed. Id., p 363.

In holding that this search was not justified by the emergency doctrine, the Eighth Circuit Court of Appeals stated that there was no evidence that the police believed that an emergency existed at the time of entry. Id., p 365. The court did not apply a traditional probable cause analysis, but instead stated that the police could legally enter a dwelling if they had a reasonable suspicion that an emergency existed. According to the Root court, the legality of such a search depends on whether the officer can point to specific and articulable facts that, taken together with rational inferences from those

facts, reasonably warrant such an intrusion. Id., p 365.

We find that a number of our sister courts have also formulated persuasive and instructive tests. For example, Wisconsin articulated such a test in State v Prober, 98 Wis 2d 345; 297 NW2d 1 (1980), [7] a case we cited in Ohlinger, supra, p 484, n 6. Prober was decided in 1980, and at that time the Wisconsin Supreme Court had already recognized and applied some form of the emergency aid exception in several cases.[8]

The court needed to determine whehter a belief that the defendant was overdosing on some drug justified a police search of the defendant's handbag that may have contained such a drug. In order to evaluate the legality of this search, the court formulated a test for what it referred to as the medical "emergency doctrine exception to the

warrant requirement." Id., p 362. Accordingly, the court formulated a two-part test for a valid without a warrant search comprised of both a subjective and an objective element. First, the officer performing the search must actually be motivated by a perceived need to render aid. Second, even if the officer is actually motivated by this perceived need, the circumstances must be such that a reasonable person would think that an emergency existed. Id., p 365. Accordingly, the court found that this test was not met and suppressed the evidence found in the defendant's purse. Id., p 366.

The Wisconsin Supreme Court has applied this test in determining the lawfulness of an entry into a home. For example, in State v Boggess, 115 Wis 2d 443; 340 NW2d 516 (1983), it held that an entry into a defendant's home to

investigate an anonymous call reporting that children living there had been abused and were in need of medical attention was legal under the emergency exception. Id., pp 445-446. The caller supplied details including the names of the children and the fact that one of the children was limping and bruised, and stated that he knew the children and the defendant fairly well. A social worker and a police officer went to the defendant's home, entered without a warrant and without the defendant's consent, and found injured children and other evidence used to charge the defendant with child abuse. Id., pp 445-448.

The court applied the test articulated in Prober, finding that the entry into the defendant's home was legal under the emergency exception to the warrant requirement. Id., p 458. It

noted that the trial court had made a finding that the social worker and police officer were motivated by a perceived need to render aid or assistance, and thus the subjective part of the Prober test was met. Id., p 450. As for the second step, it found that a reasonable person would believe that an emergency requiring immediate entry existed. Id., p 458. Although the court acknowledged that an anonymous call is a less reliable source of information than some other sources might be, it found that because the call in this case provided such detailed information, some of which was corroborated before the social worker and police officer entered the home, it could support a reasonable belief that an emergency requiring immediate entry existed. Id., pp 453-454.

The New York Court of Appeals fashioned a useful test in People v

Mitchell, 39 NY2d 173; 383 NYS2d 246; 347 NE2d 607 (1976), cert den 426 US 953 (1976). Although this case predates Mincey we find it consistent with Mincey, and instructive. While conducting a search of a hotel for a missing chambermaid, the police entered the defendant's room, observed blood stains on the carpeting, opened a closet door, and discovered the maid's body. The New York Court of Appeals upheld the entry into the room under what they called the emergency doctrine. They formulated a three-part test for applying this doctrine:

> (1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property.
>
> (2) The search must not be primarily motivated by intent to arrest and seize evidence.
>
> (3) There must be some reasonable basis, approximating

> probable cause, to associate the emergency with the area or place searched. (Id., pp 177-178.)

In formulating this test the court acknowledged that police officers need not be completely unmotivated by the desire to solve a crime to invoke this exception. It noted that in many emergency situations there is a very strong possibility that criminal activities could account for the emergency., Thus, the police are bound to be motivated in part by the desire to solve a crime in most emergency situations. However, because this exception is a narrow one, courts must closely scrutinize the actions and motives of the police in order to determine whether the exception applies. This test is a means of subjecting police actions to that scrutiny.

Finally, we note that one commentator sets forth the standard

required for police to act as whether the police had reasonable grounds to believe that some kind of emergency existed. 2 La Fave, Search & Seizure, Sec 6.6(a), p 698. Specifically, there must be evidence that would lead a prudent and reasonable official to see a need to act. Id. The officer must be able to point to specific and articulable facts, which, taken with rational inferences from those facts, reasonably warrant intrusion into protected areas. Id..

This survey of the cases that we relied upon in Ohlinger and of other leading cases in this area makes it clear that much authority supports the conclusion that while the police need not possess probable cause that a person is in need of immediate aid before entering a dwelling, they must possess a reasonable belief that such circumstances exist.

b. The Community Caretaking Function

The police perform a variety of functions that are separate from their duties to investigate and solve crimes. These duties are sometimes categorized under the heading of "community caretaking" or "police caretaking" functions. When police, while performing one of these functions, enter into a protected area and discover evidence of a crime, this evidence is often admissible. The people argue here that administering emergency aid is one of the caretaking functions of the police, and, because the police officers in this case were performing a caretaking fuction and doing so in a reasonable way, the discovered evidence should be admitted.

The first United States Supreme Court case that discussed the community caretaking exception to the warrant

requirement was cady v Dombrowski, 413 US 433; 93 S Ct 2523; 37 L Ed 2d 706 (1973). In Cady, the defendant was seeking to suppress evidence discovered through a search of his automobile without a warrant, which had been towed at police request to a nearby private garage. The defendant was an off-duty Chicago police officer who had crashed his car into a bridge abutment in rural Wisconsin. Officers came to the scene, discovered that the defendant was drunk, arrested him for drunk driving, and sent him to the hospital. They then towed his car to a private garage. One of the officers noticed that the defendant did not have his gun with him when he was arrested. Because he thought that Chicago police officers were required to carry their guns with them at all times, he believed that the gun must be in the car. He went to the garage and searched the

defendant's car, discovering bloody clothes, and a blood-spotted flashlight. These other items found in the car were used to convict the defendant of murder. Id., pp 435-439.

The United States Supreme Court held that this entry into the car was legal and that the evidence should not be suppressed. In finding the intrusion legal, the Court noted that the officers were not searching for evidence of any crime, but rather were confronting one of the situations that local police officers frequently encounter and were acting in an administrative, rather than investigatory, capacity. The Court stated that the police were acting pursuant to their "community caretaking function," which the Court described as follows:

> Local police officers ... frequently investigate vehicle accidents in which there is no claim of criminal liability and

> engage in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute. (Id., pp 441.)

So, according to the United States Supreme Court, the defining characteristic of community caretaking functions is that they are totally unrelated to the criminal investigation duties of the police.

Cady does not include any discussion of the standard of suspicion required for police to enter into protected areas when performing these functions. It is clear from the Court's opinion that the concepts of probable cause and reasonable suspicion were inapposite to an inquiry into whether the police action in this case violated the Fourth Amendment. The Court's opinion suggested that because the police were not looking for any

evidence of a crime, they needed no suspicion at all to "search."

Federal and state courts have included a variety of police activities under the heading of community caretaking functions. Courts have held that impoundment of automobiles and inventory searches of them, as in Cady, responding to missing vehicle complaints,[9] investigating noise complaints.[10] and searching an unconscious person for identification[11] are community caretaking functions.

The people assert that rendering aid to persons in distress is one of the community caretaking functions of the police. We agree. Indeed, this Court already stated that entries made to render aid to a person in a private dwelling were part of the community caretaking function Ohlinger, supra, p 483.

In United States v Nord, 586 F2d 1288, 1290-1291 (CA 8, 1978), the Court of Appeals held that the community caretaking functions of the police include responding to persons in need of immediate aid. In this case, a friend of the defendant contacted the police and let them into the defendant's home to check on the defendant's welfare. The police found guns in plain view. The police discovered that the defendant was a convicted felon, and he was ultimately convicted of possessing weapons. Id., p 1289. Nord challenged his conviction on the ground that the police were improperly in his home when they saw the guns. The federal district court had ruled that the police had a right to be in the home while carrying out their routine community caretaking functions, which included responding to calls requesting assistance for persons in need

of immediate aid. Id., pp 1290-1291. The Eighth Circuit affirmed the district court holding.

This Court has issued only two decisions besides Ohlinger discussing the community caretaker exception. Both relate to police impoundment and inventory of automobile. In People v Toohey, supra, p 291, this Court held that an impoundment and inventory search were constitutional because they were conducted in accordance with departmental procedures. We noted that impoundment and inventory were consitutionally valid as part of the caretaking function performed by the police. Id., p 275. In People v Krezen, 427 Mich 681; 397 NW2d 803 (1986), this Court upheld an impoundment of a vehicle pursuant to an arrest. This court stated that the impoundment was done pursuant to the officers' "caretaking function rather

than an investigative one, instituted according to standard departmental policy to protect the defendant and the police ...." Id., p 688 (opinion by Boyle, J.) (Emphasis added.) This list of community caretaking functions, obviously, is not exhaustive. Indeed, many functions could be considered "caretaking" functions, as long as they are not performed to investigate or solve crimes.

We conclude that the Court of Appeals was in error when it found the community caretaking exception to be a subcategory of the exigent circumstances exception to the warrant requirement. In so stating, they confused two very distinct doctrines. Neither the community caretaking nor the emergency aid exceptions should be confused with the exigent circumstances exception. When the police act pursuant to the exigent circumstances exception, they are

searching for evidence or perpetrators of a crime. Accordingly, in addition to showing the existence of an emergency leaving no time for a warrant, they must also possess probable cause that the premises to be searched contains such evidence or suspects. See People v Blasius, supra, pp 593-594. See also Schmerber v California 384 US 757; 86 S Ct 1826; 16 L Ed 2d 908 (1966); Vale v Louisiana 399 US 30; 90 S Ct 1969; 26 L Ed 2d 409 (1970). In contrast, the community caretaker exception is only invoked when the police are not engaged in crime-solving activities.

Further, although administering emergency aid is referred to as one of the community caretaking functions of the police, this should not have any effect on the law governing the emergency aid exception. While categorizing these different activities under the heading of

"community caretaking functions" may be useful in some respects, it does not follow that all searches resulting from such activities should be judged by the same standard. Community caretaking activities are varied and are performed for different reasons. Although, for example, inventory of a car and entry into a dwelling may both be categorized as "caretaking functions," it does not follow that both types of activities should be judged by the same standard. It is particularly important to note that the levels of intrusion the police make while performing these functions are different. For example, a police inventory of a car is much less intrusive than a police entry into a dwelling. The extent to which the police intrude into protected areas is only one of the unique issues presented by the emergency aid doctrine. This is why so many courts

have seen fit to articulate standards specifically applicable to emergency aid entries. Accordingly, we hold that when the police are investigating a situation in which they reasonably believe someone is in need of immediate aid, their actions should be governed by the emergency aid doctrine, regardless of whether these actions can also be classified as community caretaking activities.

Drawing upon the standard articulated in Ohlinger, and upon the cases discussed above, we hold that police may enter a dwelling without a warrant when they reasonably believe that a person within is in need of immediate aid. They must possess specific and articulable facts that lead them to this conclusion.[12] In addition, the entry must be limited to the justification therefor, and the officer may not do more

than is reasonably necessary to determine whether a person is in need of assistance, and to provide that assistance.[13]

III

In this case, the police had no warrant and no probable cause. Therefore, they could not legally enter the motel room to search for evidence of a crime. The entry can only be justified by showing that they had another purpose - one that fits one of the exceptions requiring less than probable cause.

The test we have articulated requires a determination of whether the officers possessed a reasonable belief based on specific, articulable facts that someone in room 33 was in need of immediate aid. The police had received a radio dispatch informing them that the manager at the motel had reported hearing

shots fired in or out of one of two motel rooms. We note again the words of the dispatch: "Belmar motel, Room 33 or 34, desk clerk says shots fired." The dispatch identified two possible rooms. It also directed them to a possible witness. It does not suggest that any person was injured, other than by implication because of the inherently dangerous nature of gunshots. With this dispatch as their only source of information, upon arriving at the motel, the police proceeded to one of the two rooms, where they encountered an occupant who was unwilling to open the door. This is the totality of information that the police had before them.

It is important to note that unlike Barone, supra, where the police themselves heard screams, the police in this case had not heard shots fired. Nor did they interview any witnesses who

heard them, not even the desk clerk, whom the dispatch identified as the source of the information. Further, as we noted above, unlike Boggess, supra, where the anonymous caller gave considerable detail about alleged child abuse, the initial source of information here gave very little detail about the situation. In this case, the caller claimed to be the manager of the motel, but gave an incorrect name of the motel, and was unable to provide its address or cross street, purportedly because of having just started the job. In addition, the record does not indicate that the police made inquiries of the manager who approached them, or that they knocked on other doors. They encountered no circumstances that suggested that shots had in fact been fired. We recognize that the defendant took several minutes to open the door and that the police

became suspicious that she was hiding something. Indeed, they could well have considered the possibility that she was concealing a person in need of aid. However, there are other possible explanations for her behavior. She could have been dressing, concealing contraband, or simply been unwilling to open the door. The mere fact that she delayed in opening the door does not, in our judgment, support a reasonable belief that a person within the room was in need of immediate aid.

The issue in this case is not whether the sound of gunfire could justify entry to a motel room under the emergency aid doctrine. We surmise that in most cases it would. The issue, rather, is whether information reporting such sounds coming from a somewhat questionable source who possesses limited knowledge of the location of the motel

was, without further corroboration, sufficient to provide a reasonable basis on which to expect that a person or persons were in need of emergency aid. Under the circumstances of this case, we answer that question in the negative.

As the trial judge stated, we do not question that the police may investigate when they receive a dispatch like this one, but rather in what manner they may do so. Our decision requires that the police have reasonable belief, based on specific and articulable facts, that a person within is in need of immediate aid before they force entry into a dwelling. The police were unquestionably justified in investigating the radio dispatch. They were justified in going to the door of room 33 and attempting to ascertain <u>if</u> shots had indeed been fired. They were free to interview a manager or desk clerk, or the occupants of adjoining

rooms. However, the constitution prohibits them from forcing entry into a dwelling on the basis of a speculation that someone inside may have been injured.

Accordingly, we find that the people have not shown that the police reasonably could have believed, on the basis of specific and articulable facts, that a person within room 33 was in need of immediate aid. The police were thus not authorized to force entry into the room. Therefore, we hold that the entry into defendant's room violated the Fourth Amendment, and the evidence obtained pursuant to that entry must be suppressed.

Reversed.

s/ James H. Brickley
s/ Patricia J. Boyle
s/ Robert Griffin
s/ Michael F. Cavanagh
s/ Conrad Mallett Jr.
s/ Dorothy Comstock Riley
s/ Charles Levin

[1]The Tape and transcript also included the actual police dispatch and Scout 7-5's response. Although the dispatcher correctly identified the site as the Belmar Motel, rather than the Belmont, either Officer Hill or Officer Brown responded that they were on their way to the "Belmont" Hotel, misstating the name exactly as the original caller did. At oral argument, Davis' counsel argued that this raised a possibility that Officers Hill and Brown themselves were somehow involved with the call. However, the 911 call and police response are the only circumstances even suggesting police involvement in "setting up" Davis. The defense introduced no other evidence and the trial judge made no finding that any such thing may have occurred.

[2]The people acknowledge that there is no probable cause here, but argue that the community caretaker doctrine requires something less than probable cause.

[3]The Court of Appeals erroneously stated that the police were outside the motel room when they observed the gun. The people have conceded that the police entered the room before they saw the gun or narcotics and paraphernalia.

[4]Even though we resolve this case on the basis of the emergency aid doctrine, the Court of Appeals assertion that the community caretaker function is a subcategory of the exigent circumstances

doctrine requires a more general clarification of the exceptions to the warrant requirements.

[5]The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

In view of our conclusion that the Fourth Amendment was violated, it is unnecessary for us to discuss the parallel provision of the Michigan Constitution.

[6]It is important to note that Ohlinger was decided after the Court of Appeals made its decision in this case, so it did not have the benefit of our analysis in this area.

[7]Prober was overruled on other grounds in State v Weide, 155 Wis 2d 537; 455 NW2d 899 (1990).

[8]See State v Pires, 55 Wis 2d 597; 201 NW2d 153 (1972); State v Hoyt, 21 Wis 2d 284; 124 NW2d 47 (1964); State v Davidson, 44 Wis 2d 177; 170 NW2d 755 (1969); La Fournier v State, 91 Wis 2d 61; 280 NW2d 746 (1979).

[9]In Duck v State, 518 So 2d 857 (Ala Crim App, 1987), the defendant filed a missing vehicle complaint, then later withdrew it. Two police officers came to his trailer home to have him sign a form withdrawing his original complaint. When they entered his home, they saw marijuana in plain view. The Alabama Court of Criminal Appeals held that this "search" was legal, stating that the officers had a right to be where they were when they saw the marijuana because they were carrying out a routine community caretaking function. Id., p 860.

[10]State v Bies, 76 Ws 2d 457, 470-471; 251 NW2d 461 (1977). In this case, the Wisconsin Supreme Court held that when a police officer, in response to a noise complaint, entered the defendant's yard, looked into his open garage, and discovered evidence of a crime, the search was legal. The court held that investigating such a complaint was "probably" a part of the community caretaking function. Id., p 471. When acting pursuant to this function, the court stated, the conduct of the police should be evaluated pursuant to a reasonableness standard. Id., p 468.

[11]State v Hutchison, 56 Wash App 863; 785 P2d 1154 (1990).

[12]In formulating this test, we draw upon the Wisconsin test discussed above. However, because it is not necessary to do so in

order to resolve this case, we will not determine today whether we will adopt the subjective element of the test the Wisconsin court articulated. However, we do note that it is important to place strict limits on the application of this emergency aid exception. A finding that police are entering to administer aid and not to search for evidence is implicit in a finding that their entries fall under this exception. In the words of Professor LaFave:

> Any conduct within (a dwelling) by the officer which is in any way inconsistent with the purported reason for the entry is a just cause for healthy skepticism by the courts.... (I)t is essential that courts be alert to the possibility of subterfuge, that is, a false claim of such a purpose where the true intent is to seek evidence of criminal conduct. 2 LaFave, supra, p 706.

[13]The requirement that, after entry, the police not do more than is necessary to determine whether a person is in need of aid is not at issue here because the officers in this case immediately saw evidence in plain view upon entering the room.

Supreme Court, U.S.
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No. 92-1587

In the Supreme Court of the United States

October Term, 1992

THE PEOPLE OF THE STATE OF MICHIGAN,

Petitioner,

vs.

HARRIET DAVIS,

Respondent,

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

The respondent, Harriet Davis, asks leave to file her Brief in Opposition and to proceed in forma pauperis pursuant to Supreme Court Rule 39.1. The respondent's affidavit is filed with this Court.

The respondent had court-appointed counsel in both the Michigan Court of Appeals and the Michigan Supreme Court.

April 28, 1993

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No. 92-1587

In the Supreme Court of the United States

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THE PEOPLE OF THE STATE OF MICHIGAN,

Petitioner,

vs.

HARRIET DAVIS,

Respondent,

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF MICHIGAN

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

WHETHER POLICE OFFICERS WITH UNCORROBORATED INFORMATION CONTAINED IN A RADIO BULLETIN CAN DEMAND AT GUNPOINT THAT AN OCCUPANT OF A MOTEL ROOM OPEN HER DOOR TO PERMIT THEM TO CONDUCT A WARRANTLESS SEARCH.

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STATEMENT OF THE CASE

Detroit police officers Hill and Brown responded to a radio run "[Car] 7-7, 3250 East Jefferson, Belmar Motel, room 33 or 34, ah, desk clerk says shots fired," and drove to the Belmar Motel. (77A)[1] The tape of the call into Detroit emergency number 911 reveals that a woman called and identified herself as the manager of the "Belmont Hotel." (76A) She was unable to give the operator an address or location of the motel and sounded like she was calling from a pay phone. Id. She did not furnish the description of any suspects but merely reported that shots were fired "out of" room 33 or 34. Id.

Officers Hill and Brown were not in Car 7-7, but responded to the run anyway. (11A, 32A, 77A) They parked their car in the driveway entrance of the motel near the manager's office, but did not discuss anything with the desk clerk before investigating the motel. (15A) First, they went into the parking area of the motel. (16A) They saw no persons with weapons, no persons at all, no criminal activity, and nothing which aroused their suspicion. (15A, 32A) Armed with a shotgun and with a service revolver, and in full uniform, they went to room 33 and banged on the door, stating "Police, open up." (17A) They observed a woman (the respondent) look out the window of the room, but she did not open the door. (17-18A) Brown continued to bang his fist on the motel room door. The manager was then contacted and asked to supply a key to open room 33, but before he could open the room with a key, the woman in room 33 finally acceded to police requests and opened the door to the room. (23A) The Michigan Court of Appeals affirmed the trial court's finding that the entry of the officers, in full uniform, at gunpoint, and after demanding entry at gunpoint, was not consented to by the respondent.

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1 References to the appendices in the Michigan Supreme Court are made by a capital "A" following the page of that appendix; references to the Petitioner's appendix in this Court are made by a lower case "a" following the page number.

The Court of Appeals stated:

> Clearly, where an occupant opens a door in compliance with a police demand there can be no consent as a matter of law. (11a)

The Michigan Supreme Court found that the prosecutor conceded that the respondent did not consent to the entry of the officers. (35a)

At the time the door was opened, Hill testified that the woman was not free to leave, but was detained. (45A) Without any conversation, the officers, with their guns still out, then stepped across the threshold and entered room 33. (19-20A) The Michigan Supreme Court found that the prosecution conceded that the police officers entered the room. (11a) Hill and Brown explained the radio run they received and the purpose of their visit. (19A, 36A) Brown claims he then observed what appeared to be the butt of a gun sticking out from underneath the mattress[2] and some paraphernalia on a dresser which he believed to be narcotic paraphernalia. (20A) Hill did not make either observation, but when his partner announced he saw a gun, Hill proceeded further into the room and into the bathroom. (37A) In the bathroom he observed a bag of white powdery substance which he believed to be drugs. (39A)

The officers secured the room and requested the radio dispatch to notify a narcotics car of the Detroit Police that they needed assistance at the "Belmont Hotel." (77A) Substances from the dresser, from the closet, and from the bathroom were seized and placed into evidence and the respondent was arrested and charged with several drug offenses and a weapons charge. (19a)

In the trial court, the respondent filed a motion to suppress evidence, contesting the warrantless entry into the room and the subsequent search of the room. On November 2, 1989, the trial court held an evidentiary hearing

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2 In Michigan, concealing a firearm at a person's "dwelling" is not unlawful. MCL 750.227; MSA 28.424.

and, on December 12, 1989, suppressed the evidence seized, ruling the search and seizure unlawful because of non-consensual entry without a warrant and without exigent circumstances. See trial judge's opinion, pp. 8-9 of Petition for Certiorari. All charges against the respondent were then dismissed.

On May 21, 1991, the Michigan Court of Appeals held in a per curiam opinion that the police officers in this case could enter the motel room at gunpoint without a warrant based on "exigent circumstances." (1a-19a)

On May 20, 1992, the Michigan Supreme Court granted the respondent's application for leave to appeal, and on March 2, 1993, in a lengthy and unanimous opinion, reversed the Michigan Court of Appeals, and affirmed the trial court's suppression of evidence seized by the officer. (20a-75a)

SUMMARY OF ARGUMENT

The decision of the Michigan Supreme Court in this case was based on the facts of the case, which revealed that police officers had merely received an uncorroborated radio run that shots may have been fired out of one of two possible motel rooms. When the police officers arrived at the scene they were unable to confirm that anything had happened, nonetheless, they demanded entry at gunpoint to one of the rooms. The respondent relunctanctly admitted the police officers for a nonconsensual entry and search. The police officers possessed no warrant, nor any specific information that any crime had been committed, nor any description of any suspect of a crime. No injured person was ever found, nor did the police ever check the second motel room to see if any injured person lay therein.

The Michigan Supreme Court's findings and factual analysis are consistent with United States Supreme Court precedent, with the decisions of other federal and state courts, and with a previous Michigan Supreme Court decision. The test articulated by the Michigan Supreme Court to determine the reasonableness of police officers' emergency entry is consistent with the test developed by other state and federal courts.

The petition filed in this case violates United States Supreme Court Rule 21.1(h) because it does not disclose the stage of proceedings at which the particular federal question raised by petitioner was brought. The particular federal question brought in this case - that the Michigan Supreme Court erred in finding that an entry is not reasonable because some of the circumstances were susceptible of innocent explanations - was never raised in the Court below by any of the parties in any of the briefs filed. The petitioner has fastened on part of the factual analysis by the Michigan Supreme Court to suggest that their factual analysis raises a federal constitutional question, a question which was not presented to the Michigan Supreme Court nor any of the Courts below.

REASONS WHY THE PETITION SHOULD BE DENIED

I. POLICE CANNOT DEMAND ENTRY TO A MOTEL ROOM AT GUNPOINT, WITHOUT A SEARCH WARRANT, WHERE THEY HAVE RECEIVED AN UNCORROBORATED RADIO RUN THAT SHOTS MAY HAVE BEEN FIRED AT THE MOTEL

Justice Brickley, writing for a unanimous Michigan Supreme Court, held that police officers in the instant case could not demand entry of a motel room at gunpoint without a search warrant where they only had received a radio run that shots may have been fired but had observed nothing themselves. Justice Brickley summarized the court's factual conclusions and analysis:

> The police had received a radio dispatch informing them that the manager at the motel had reported hearing shots fired in or out of one of two motel rooms. We note again the words of the dipatch: "Belmar motel, Room 33 or 34, desk clerk says shots fired." The dispatch identified two possible rooms. It also directed them to a possible witness. It does not suggest that any person was injured, other than by implication because of the inherently dangerous nature of gunshots. With this dispatch as their only source of information, upon arriving at the motel, the police proceeded to one of the two rooms, where they encountered an occupant who was unwilling to open the door. This is the totality of information that the police had before them.

It is important to note that unlike Barone, supra, [United States v. Barone, 330 F.2d 543 (2nd Cir., 1964)] where the police themselves heard screams, the police in this case had not heard shots fired. Nor did they interview any witnesses who heard them, not even the desk clerk, whom the dispatch identified as the source of the information. Further, as we noted above, unlike Boggess, supra, [State v. Boggess, 115 Wis. 2d 443, 340 N.W. 2d 516 (1983)] where the anonymous caller gave considerable detail about alleged child abuse, the initial source of information here gave very little detail about the situation. In this case, the caller claimed to be the manager of the motel, and was unable to provide its address or cross street, purportedly because of having just started the job. In addition, the record does not indicate that the police made inquiries of the manager who approached them, or that they knocked on other doors. They encountered no circumstances that suggested that shots had in fact been fired. We recognize that the defendant took several minutes to open the door and that the police became suspicious that she was hiding something. Indeed, they could well have considered the possibility that she was concealing a person in need of aid. However, there are other possible explanations for her behavior. She could have been dressing, concealing contraband, or simply been unwilling to open the door. The mere fact that she delayed in opening the door does not, in our judgment, support a reasonable belief that a person within the room was in need of immediate aid.

The issue in this case is not whether the sound of gunfire could justify entry to a motel room under the emergency aid doctrine. We surmise that in most cases it would. The issue, rather, is whether information reporting such sounds coming from a somewhat questionable source who possesses limited knowledge of the location of the motel was, without further corroboration, sufficient to provide a reasonable basis on which to expect that a person or persons were in need of emergency aid. Under the circumstances of this case, we answer that question in the negative.

As the trial judge stated, we do not question that the police may investigate when they receive a dispatch like this one, but rather in what manner they may do so. Our decision requires that the police have reasonable belief, based on specific and articulable facts, that a person within is in need of immediate aid before they force entry into a dwelling. The police were unquestionably justified in investigating the radio dispatch. They were justified in going to the door of room 33 and attempting to ascertain if shots had indeed been fired. They were free to interview a manager or desk clerk, or the occupants of adjoining

> rooms. However, the constitution prohibits them from forcing entry into a dwelling on the basis of a speculation that someone inside may have been injured.
>
> Accordingly, we find that the people have not shown that the police reasonably could have believed, on the basis of specific and articulable facts, that a person within room 33 was in need of immediate aid. The police were thus not authorized to force entry into the room. Therefore, we hold that the entry into defendant's room violated the Fourth Amendment, and the evidence obtained pursuant to that entry must be suppressed. (66a-71a) (emphasis in original)

In reaching this conclusion, the Michigan Supreme Court applied the standard for reasonableness as follows:

> [W]e hold that police may enter a dwelling without a warrant when they reasonably believe that a person within is in need of immediate aid. They must possess specific and articulable facts that lead them to this conclusion. In addition, the entry must be limited to the justification therefor, and the officer may not do more than is reasonably necessary to determine whether a person is in need of assistance, and to provide that assistance. [footnotes ommitted] (65a-66a)

The Michigan Supreme Court distinguished the instant case from a prior decision, where the court had permitted police to effectuate an entry to render emergency aid. In City of Troy v. Ohlinger, 438 Mich. 477, 475 N.W. 2d 54 (1991), the court had held that it was permissible for an officer to enter a home to render aid or assistance. Justice Levin, writing for a unanimous court, had stated a test which needed to be met in order to justify warrantless entry of a home to render immediate assistance to a person who is in serious need of medical aid. Justice Levin stated:

> Where the police have probable cause, based on specific, articulable facts, to believe that immediate entry is necessary to assist a person who may be in serious need of medical aid, they may enter without a warrant. The entry must be limited to the justification therefor, and the officer must be motivated primarily by the "perceived need to render aid or assistance." The officer may not do more than is reasonably necessary to determine whether a person is in need of assistance, and to provide that assistance. [footnotes omitted] 438 Mich. at 83-84.

The decision in the instant case which the Petitioner seeks to review at once extended Ohlinger and also limited it. The requirement in Ohlinger that police "have probable cause" was reduced to a standard that the police must "reasonably believe" that a person within is in need of immediate aid. (66a) While the actions of the police were approved in Ohlinger, the actions of the police in the instant case were not approved by the Michigan Supreme Court because the facts known to the officers did not "provide a reasonable basis on which to expect that a person or persons were in need of emergency aid." (70a)

The articulation of the police powers to render emergency assistance and the limits to those powers, as established by the Michigan Supreme Court in the instant case and in Ohlinger, are no different than those established by other state courts throughout the country. See, e.g.; State v. Prober, 98 Wis. 2d 345, 297 N.W. 2d 1 (1980); Zinn v. State, 656 P. 2d 1206 (Ala. App. 1982); People v. Mitchell, 39 N.Y. 2d 173, 383 N.Y.S. 2d 246, 347 N.E. 2d 607 (1976).

The decision of the Michigan Supreme Court and its analysis is consistent with federal cases that have interpreted the "emergency aid" doctrine and with the rule of law that a police officer cannot demand entry to a person's room to investigate unknown circumstances in the absence of a search warrant. See Johnson v. United States, 333 U.S. 10 (1948) (a police officer who smelled the smell of opium burning could not knock on the door and demand entrance to investigate in the absence of a search warrant). Police officers, absent exigent circumstances, need an arrest warrant before entering a home or a motel room occupied by a suspect. See, Payton v. New York, 445 U.S. 573 (1980)

The "community caretaking" function, as enunciated by the United States Supreme Court in Cady v. Dombrowski, 413 U.S. 433 (1973), does not permit a warrantless entry at gunpoint based on uncorroborated information. In that case, this Court held that where a vehicle had been involved in a motor vehicle accident and the occupant injured, and where the police knew the

occupant was an off-duty police officer, after towing the disabled vehicle from the accident scene, the police could search the vehicle for the off-duty officer's firearm, since it was known that he carried one, since one had not been found on his person, and since the presence of a firearm in a vehicle presented a danger. The community caretaking function suggested by Cady v. Dombrowski is a function of the police that is "totally divorced from the detection, investigation or acquisition of evidence" relating to a crime. 443 U.S. at 441.

The "emergency aid" doctrine may allow police officers to enter a residence to offer emergency aid or assistance without a search warrant, but it does not permit entry at gunpoint based on uncorroborated information. The doctrine developed from Mincey v. Arizona, 437 U.S. 393 (1978) where the court stated in dicta that police officers could enter premises under some circumstances to provide emergency assistance to individuals without a search or arrest warrant. The Court stated:

> Numerous state and federal cases have recognized that the Fourth Amendment does not bar police officers from making warrantless entries and searches when they reasonably believe that a person within is in need of immediate aid. Similarly, when the police come upon the scene of a homicide they may make a prompt warrantless search of the area to see if there are other victims or if a killer is still on the premises. [footnotes omitted] 437 U.S. at 392.

In Mincey, the Supreme Court made it clear that the only time a police officer has legal authority to search premises without a warrant to protect life or property is when it is clear there is a "need to protect or preserve life or avoid serious injury * * *." Id, quoting Wayne v. United States, 318 F. 2d 205, 212 (C.A. D.C., 1963) (opinion of J. Burger.) As with the commmunity caretaker function, the emergency aid doctrine authorizes the actions of police officers which are not actions to search for evidence or arrest for crime. The actions of the police officer are actions not based on probable cause to arrest or search, but actions that are clearly meant to

provide aid or assistance to an injured person.

The facts of the instant case are not similar to the facts of Mincey. In Mincey, a police officer accompanied by nine other plain clothes policeman and a deputy county attorney returned to an apartment where a heroin deal had been arranged. The door was opened for the undercover policeman who was admitted to the apartment. The person who admitted the undercover officer attempted to slam the door to keep the other officers from entering, but the police rushed into the apartment. As they entered the apartment, a rapid volley of shots was heard from the bedroom. The undercover officer emerged and collapsed on the floor. The other officers then entered the bedroom and found Mincey lying on the floor wounded and semi-conscious.

The Court implied that the immediate search of the apartment at the time of the shooting, for injured persons or persons who are armed, might have been reasonable. However, the warrantless search of the apartment by homicide officers who arrived 10 minutes later after they heard a radio report of the shooting was not reasonable. The Court noted that:

> * * *[T]he mere fact that law enforcement may be made more efficient can never by itself justify disregard of the Fourth Amendment * * * . The investigation of crime would always be simplified if warrants were unnecessary. But the Fourth Amendment reflects the view of those who wrote the Bill of Rights that the privacy of a person's home and property may not be totally sacrificed in the name of maximum simplicity in enforcement of the criminal law. 437 U.S. at 393.

The dicta in Mincey about a police officer's ability to make warrantless entries to assist someone in need of immediate aid, or to search for homicide victims or the killer, was therefore never relied on by the Court in Mincey, where the search of the homicide officers was based on their response to a radio report and was not action to provide emergency aid. Therefore, the search in Mincey was held to be impermissible.

In the instant case a radio run suggesting there are shots fired does not rise to any higher level than the radio run to homicide officers in Mincey. The police officers in the instant case possessed less information than the homicide officers in Mincey, since the homicide officers in Mincey arrived at the scene of a crime, were voluntarily admitted to the apartment by other officers, and were faced with a dead body, a wounded man, and a crime scene to investigate. Compare that to the officers in the instant case who, before they demanded entry at gunpoint into the motel room where they found the respondent, had observed nothing unusual or suspicious on the scene. If the officers in Mincey who responded to the radio run could not conduct a warrantless search at the apartment based on an "emergency aid" exception, the officers in the instant case could not demand entry at gunpoint without a warrant.

In Whitely v. Warden, 401 U.S. 560 (1971), this Court held that a police radio broadcast cannot provide probable cause to arrest. In that case, an invalid arrest warrant[3] had been issued for two defendants and a bulletin was disseminated to police agencies across the state describing the defendants and their vehicle. In reliance on the radio bulletin, a policeman arrested the two described men when he saw them in the described vehicle and after a search of the vehicle found the fruits of a crime therein. The Court held that while the officer could make an arrest in reliance upon the radio bulletin, ultimately it would have to be shown that the police, collectively, had probable cause, or the fruits of the arrest could not be utilized against the defendant.

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3 The affidavit in support of the arrest warrant was legally insufficient.

Other courts have also failed to approve of the actions of police officers who acted on uncorroborated information contained in a radio bulletin. See, United States v. Timberlake, 896 F.2d 592 (C.A.D.C. 1990) and State v. Benson, 198 Neb. 14; 251 N.W. 2d 659, 661, cert. den. 434 U.S. 833 (1977)

II. THE FEDERAL CONSTITUTIONAL QUESTION PRESENTED BY THE PETITION FOR CERTIORARI WAS NOT PRESENTED TO THE STATE COURTS BELOW

The petition filed in this case does not meet the requirements of Supreme Court Rule 21.1(h), in that the statement of the case fails to state the stage in the proceedings at which the federal question presented by the petition was raised by the parties below. Perhaps the reason that the petition does not comply with that requirement is that the federal question raised by the petition was never raised in the court below.

The petitioner suggests that the Michigan Supreme Court erred in finding that an entry by police officers to render emergency aid or assistance is not reasonable if the circumstances on which it is based are susceptible of innocent explanations. First of all, this was not the holding of the Michigan Supreme Court. As discussed above, the holding was simply that the prosecution did not show "that the police reasonably could have believed, on the basis of specific and articulable facts, that a person within room 33 was in need of immediate aid." (71a) Thus, the Michigan Supreme Court held, the police were not authorized to force entry into the motel room. The Court's holding was preceded by a long factual analysis, and the petitioner attempts to abstract from that analysis one factual observation that the Court made in order to bootstrap a federal constitutional issue. However, the Michigan Supreme Court's ruling was based on all of the circumstances, its complete factual analysis, and not on the fact that the circumstances were susceptible of innocent explanations.

Moreover, the legal question which the Petitioner brings to this Court is based on one United States Supreme Court case (United States v. Cortez) and three Federal District Court cases (United States v. Holland, United States v. Sokolow, and United States v. Sutton), all of which are cited in the Petitioner's index of authorities. The Petitioner never presented this argument or this authority to the Michigan Supreme Court, to the Michigan Court of Appeals, or in any way presented this federal authority to the lower courts.

Pursuant to Rule 21.1(h), the Petitioner has not shown to this Court that the federal question he seeks this Court to review was ever presented to the lower courts, a requirement for this Court to exercise jurisdiction.

CONCLUSION

The decision of the Michigan Supreme Court was correctly decided based on existing precedent and did not articulate a new rule of federal constitutional law. The federal question now presented by the petition was not raised in the Courts below. For these reasons the petition for certiorari should be denied.

April 28, 1993

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NO.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

THE PEOPLE OF THE STATE OF MICHIGAN,
PETITIONER

vs.

HARRIET DAVIS
RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

SUPPLEMENTAL BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

DID THE MICHIGAN SUPREME COURT CORRECTLY HOLD THAT AN EMERGENCY CIRCUMSTANCES ENTRY INTO PREMISES, AS DISTINGUISHED FROM AN EXIGENT CIRCUMSTANCES ENTRY, IS MADE BY THE POLICE IN THEIR COMMUNITY CARETAKER ROLE RATHER THAN TO SEARCH FOR EVIDENCE OF A CRIME, AND IS JUSTIFIED IF "REASONABLE," PROBABLE CAUSE NOT BEING REQUIRED, BUT ERR IN FINDING THAT AN ENTRY IS NOT REASONABLE IF THE CIRCUMSTANCES ON WHICH IT IS BASED ARE SUSCEPTIBLE OF INNOCENT EXPLANATIONS?

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SUPPLEMENTAL REASON FOR GRANTING THE WRIT

As indicated in the Petition, the Michigan Supreme Court in this case agreed with the prosecution that a part of the "community caretaking" function of the police is to respond to "emergency circumstances," which is a different doctrine than "exigent circumstances." Exigent circumstances is an ordinary search for evidence upon probable cause, the warrant being excused because of the exigency of the circumstances; emergency circumstances is where the purpose of the entry/search is not to find evidence, but, for example, because of a reasonable belief someone inside might be in need of immediate aid. Exigent circumstances requires probable cause; emergency circumstances does not. The quarrel of the state with the Michigan Supreme Court was its application of a reasonableness standard akin to reasonable suspicion,

which required a negating of reasonable inferences susceptible of other than a nefarious construction.

The recent case of United States v Erickson, 53 Cr L 1073 (CA 9, No. 92-30107, 4-12-93) further demonstrates the need for review by this Court of this area of law. In that case the police believed a residence had been burglarized due to neighbor reports of two men dragging a large brown plastic bag, which appeared to be full of heavy items, across the backyard of the individual, Erickson, who came to be a defendant. In order to determine whether the house had been burgled, an officer who came upon an open basement window pulled bag a plastic sheet covering the window and looked in, and saw marijuana plants.

In a surprising holding the Ninth Circuit held that the community caretaking

function of the police does not extend at all to residences or commercial buildings, being limited strictly to automobiles. Only exigent circumstances, requiring probable cause, will allow entry into premises without a warrant, held the court. This holding is mistaken, Petitioner submits, for reasons stated in the petition. See 2 LaFave, Search and Seizure (2d Edition), sec. 6.6. Professor LaFave has stated that the police "may also enter private property for the purpose of protecting the property of the owner or occupant or some other person." As an example of such appropriate police conduct Professor LaFave points to the circumstance "where the police reasonably believe that the premises have recently been or are being burglarized." 2 LaFave, Search and Seizure, 6.6(b), p.707 ff.

Because, as the Ninth Circuit case of United States v Erickson demonstrates,

there is a confusion regarding the doctrine of emergency circumstances as a part of the community caretaking function of the police as distinguished from exigent circumstances, and because, though the Michigan Supreme Court properly understood the distinction it misdefined reasonableness under the emergency circumstances/community caretaking doctrine, certiorari should be granted.

RELIEF

WHEREFORE, petitioner requests that certiorari be granted.

Respectfully submitted,

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